

SAMUEL GRICE.

DECEMBER 23, 1831.

Mr. WHITTLESEY, from the Committee of Claims, made the following

REPORT:

The Committee of Claims, to whom was referred the petition of Samuel Grice, report:

That the Board of Navy Commissioners, on the part of the United States, and Samuel Grice for himself, on the third of September, 1827, made a contract, and thereby the said Samuel Grice agreed to deliver at Gosport a certain quantity of live oak timber, by the first of November, 1830; and another contract was made between the said parties, on the 8th of April, 1829, and thereby the said Samuel Grice agreed to deliver another quantity of live oak timber at the same place, by the first of April, 1830; and the United States, by said contracts, became bound, on the performance of the contracts by said Samuel Grice, to pay him for said timber certain prices stipulated in the contract, and the payments to be made as the timber was delivered, subject to a deduction of ten per cent., under the following clause of the contract, to wit: "that the said payments shall be made by the Navy Agent, at Norfolk, as the aforesaid timber shall be delivered, reserving and deducting from the amount of each cargo ten per centum, as collateral security for the faithful execution of the contract, no part of which sum so deducted, shall be paid to the said Samuel Grice until the final completion of this contract; and, if the contract shall not be fully completed to the entire satisfaction of the said Navy Commissioners, within the time stipulated, then the whole amount so reserved, and deducted, shall be forfeited by the said Samuel Grice to the use and benefit of the United States."

The petitioner having lost a vessel, used for the transportation of the timber to be delivered under the first-mentioned contract, and several of his hands having died, and others having been confined by sickness, on the 22d of May, 1830, he wrote to the Board of Navy Commissioners, and informed them he should not be able, from the causes mentioned, to complete his first contract within the time he had agreed to perform it, and requested an extension of it for four months, which being considered reasonable by the Commissioners, and within their power, they gave the extension. The second contract was not completed within the time limited, but no objections were made by the Board of Navy Commissioners, to receiving timber

in fulfilment of the contract, after the time had expired within which it was to have been delivered; and the whole timber, mentioned in both contracts, has been delivered by the petitioner, and received by the Navy Agent. The timber was purchased for the gradual increase of the navy, and was not wanted for immediate use. The Board of Navy Commissioners say the United States have sustained no loss, and that the quality of the timber was as good as the petitioner was bound to deliver. The ten per centum, reserved in the contract, is retained by the 4th Auditor, under the decision of the 2d Comptroller and the Attorney General, because the contracts were not literally and strictly fulfilled within the time stipulated; and on the ground that the Board of Navy Commissioners did not possess the power to extend the time for the performance of a contract, and that the ten per centum having become forfeited, the accounting officers of the Treasury, nor the President of the United States, can relinquish the claim of the United States.

The petitioner presents the following account, to wit:

<i>United States Navy Department,</i>		<i>to Samuel Grice.....Dr.</i>	
To cash paid interest on moneys borrowed at sundry times, in consequence of not receiving it at different times from the Navy Agent, when due by the contract - - - \$141 59			
Amount of ten per centum retained, and due Sept. 23 last - 8,581 62			
To expenses to and from Washington twice, viz. on the 12th, and on the 27th October - - - 48 00			
Nov. 18. To interest on \$8,723 21, for 1 month 25 days - 79 89			
To loss of time occasioned - - - 150 00			
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Cr....By cash, November 18, 1831 - - - 9,001 10			
- 1,149 48			
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Balance \$7,851 62			

The Navy Commissioners supposed they had a right, and had exercised it in other cases, to extend the time for performing the contract; and the timber having been delivered to their acceptance and entire satisfaction, they would have paid the amount retained, without troubling Congress with the investigation of the claim, if they had the power to do it. The 4th Auditor, the 2d Comptroller, and the Attorney General, entertain the opinion that the accounting officers cannot allow the claim, for the reasons heretofore assigned; that the petitioner has a strong equitable claim, but that he cannot obtain relief, except by Congress. The committee is not disposed to review the decision of these officers; but the members of it regret that the petitioner has been delayed in receiving what is acknowledged to be justly his due, and that he must necessarily sustain a loss by the interposition of official technicalities.

It has not been the practice of this committee to report any allowance for interest, where a creditor of the United States has come to Congress for relief, unless such allowance was based on some agreement to pay interest; nor for the money expended, or time bestowed, in attending to the settlement of a claim. The committee think the petitioner is entitled to relief for the amount of money retained, being \$8,581 62, deducting \$1,149 48 received in November, 1831; and, for the difference, report a bill.